Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

SUPREME COURT NO. A-242
APPELLATE COURT NO. 93-5324
D.C. DOCKET NO. 91-0961

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

Lu I. Gowin,

Petitioner

vs.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES and All Responsible Agencies,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Temporary Mailing Address and Phone:
Lu I. Gowin
% Pritchett
P.O. Box 0833
Deerfield Beach, Fl. 33443-0833
305-860-0689

35pp

QUESTIONS PRESENTED FOR REVIEW

For 15 years, Defendant has been falsifying Plaintiff's driving record in its computer:

1. Never recording her routine applications for drivers license renewal
2. Throwing away her successful driver exam results
3. Falsely stating she was "convicted" 4 years pre-trial
4. Never recording:
    a. Plaintiff's sole "trial", on January 5, 1987, in which she prevailed on all counts
    b. Its own verbal admission that it is acting only on its own record error
5. Disposed of:
    a. Plaintiff's car and legal tag, without any compensation
    b. The Christmas gifts inside
6. Suspended Plaintiff's license
7. Charged her a fee for "reinstatement" while continuing to jail her for "suspension"
8. Never once produced a witness, a single piece of evidence, nor prosecution against Plaintiff
9. Incarcerated her 5 times, amounting to 19 days without hearings
10. Precipitated the terminal infection of her husband, who was totally disabled from his services as radar specialist to the Navy, by depriving him of her vitally needed assistance. Mr. Gowin passed away 2 months after her 7 day false incarceration.
11. Continues to transmit its false "report" to every police officer on the road, who questions why Defendant has not reissued her stolen tag and updated her car registration and license.

Is it the intention of the United States Constitution that:

1. Under color of "State of Florida", Defendant continues to defy the outstanding Traffic Court Judgment in Plaintiff's favor, of "Not Guilty," "Not Guilty", Nolle Prosse", Nolle Prosse".

2. Continues to indefinitely treat Plaintiff as its possession, never beginning to acknowledge her Civil Rights

3. Continues to treat the Constitution of the United States, and the Florida Statutes with total contempt

4. Continues to lie to our Federal, State and County Governments with its intentional falsification of facts

LIST OF ALL PARTIES TO THE PROCEEDINGS

LU I. GOWIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, and AllResponsible Agencies

RULE 29.1 LISTING

Petitioner, Lu I. Gowin, is a private party, who was successfully, seasonally employed by the State of Florida, from the beginning, and during the pendency of the listed damages.

Plaintiff is also officially licensed in the State of Florida, as a health professional and a safe driver, except for Defendant's illegal interference with her access to the currency of both licenses.

Defendant, for the purpose of this action, is litigated only for its admitted failure to fulfill its legally required obligation, under F.S. 322.20, and the resulting very serious damages to Plaintiff and her family.

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SUPREME COURT NO. A-242
APPELLATE COURT NO. 93-5324
D.C. DOCKET NO. 91-0961

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LU I. GOWIN,
Petitioner,

vs.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR
Vehicles and All Responsible Agencies
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

OPINIONS BELOW

LU I. GOWIN v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, and All Responsible Agencies, Affirmation without Opinion of Eleventh Circuit, reproduced herein below as Appendix C; and LU I. GOWIN V. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, and All Responsible Agencies, Opinion of U.S. District Court, Southern District of Florida, reproduced herein below as Appendix D.

STATEMENT OF JURISDICTION

No opinion was given by the United States Court of Appeals for the Eleventh Circuit. Its Affirmation was reproduced herein as Appendix C. This Court has Jurisdiction to issue the required Writ of Certiorari, under 28 U.S.C. ss 1254(1) or require the entire record to be sent up for decision of the entire matter in controversy, under 28 U.S.C. 1254(2).

The Appellate Court had Jurisdiction pursuant to Rule I, of F.R.A.P.

The District Court had Jurisdiction pursuant to 28 U.S.C. ss 1331.

September 18, 1995, Extension Time Granted by Supreme Court up to and including October 18, 1995

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

The Right of the people to be secure in their person, houses, papers and efeects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

U.S. Const. Amend. IV. See Miller v. Scobee

STATEMENT OF THE CASE

A. Factual Background:

In 1980, Plaintiff's car was totaled by an oil truck, in Tallahassee. The Florida Highway Patrol Officer stated he saw no way Plaintiff could have been at fault, but would make no judgment. His report said both parties were equally at fault. The truck company told Plaintiff the Officer privately agreed to change it when she left town to state she was totally at fault.

The Department showed Plaintiff the original report, but refused to give her a copy. Then the Department destroyed the original record, and filed a new one, just as above stated. The Administrative Judge told the Plaintiff to report the Department for investigation. The Department suspended Plaintiff's license without cause.

Two years later, five top officials were fired. To date, the Department has kept no account of Plaintiff's official driving record, but has routinely entered false data against Plaintiff into its con mputer, as substitute.

On the basis of this substitute, Defendant has behaved as a stalker upon Plaintiff. Please see details under, "QUESTIONS PRESENTED FOR REVIEW", p. 1 above. Presently, another false arrest warrant has been issued against Plaintiff, solely upon Defendant's failure to document 2 associated Court appearances by Plaintiff, at which the State, both times, verified the citations were an error, and Plaintiff had no obligation to appear at all.

B. Admission of Fault:

Defendant appeared only once in Traffic Court, in 16 years, on January 5, 1987, , at which time it admitted its handcuffing and jailing of Plaintiff, for 7 days, its illegal

sale of her Cadillac, , and illegal seizure of her tag were all due to its own Department's record error. At the same time, the State Attorney verified that, however the Court would rule, there was no cause for incarceration. The Trial Court ruled in favor of Plaintiff, "Not Guilty", Not Guilty", "Nolle Prosse", "Nolle Prodsse".

Defendant has never officially contested any of the above. Nor has it ever to date, produced a single witness, poece of evidence nor prosecution against Plaintiff. But continues to circulate false clainms against her, and to totally despise the Traffic Court Judgment.

C. Proceeding Below:

1. Plaintiff sought Injunctive Relief and T.R.O. against Dade County Finance Department, Auto Tag Section, for replacement of stolen auto tag, which it refused without couse.

2. Defendant moved to dismiss, stating that Department of Highway Safety and Motor Vehicles must be joined for sufficiency of process.

3. Plaintiff responded that the Court had authority to join an indispensable party, undr F. R. C. P. 19.

4. Defendant stated Complaint should be dismissed with leave to amend, and to name the Department of Highway Safety and Motor Vehicles and the County Tax Collector as the only proper parties.

5. Magistrate Stephen Brown's Recommendation was that Motion to Dismiss be granted with leave to amend.

6. Judge Davis Dismissed with Leave to Amend, including proper, necesary, and indispensable parties.

7. Plaintiff filed Amended Complaint, including Department of Highway Safety and Motor Vehicles, and All Responsible Agencies, pursuant to Rule 65 of F.R.C.P., over which the District Court acknowledges jurisdiction, pursuant to 28 U.S.C. ss 1331, for relief to which Plaintiff is entitled, pursuant to 28 U.S.C. ss 2283, asking injunctive relief against all further damages, and compensation in excess of $10, 000.00, for Department's violation of F.S. 322.20, the Fourth Amendment, and Miller v. Scobee.

8. Plaintiff asked further compensation of $100,000.00, for Department's violation of F.S. 322.20, the Fourth Amendment and Miller v. Scobee.

9. Defendant now contradicted itself and claimed Amended Complaint is barred by the Statute of Limitations.

10. Plaintiff Move to Strike, on F.R.C.P. 12(c). "If the Defendant's activities constitute continuing or additional violations of the law, then the doctrine of continuing wrong applies". New Port Largo, Inc. v. Monroe County 706F. Supp. 1516 (S.D. Fla. 1988).

The injury which is the original basis of this action occurred on April 30, 1991, Plaintiff filed suit on May 7, 1991.

Defendant's injuries to Plaintiff have never ceased. Even on the date of this writing, Defendant is trying to falsely incarcerate Plaintiff, in contempt of the Trial Court's Judgment that Plaintiff is not the party at fault for any of Defendant's for any of Defendant's false allegations or damages against her.

11. Magistrate Brown recommended that Motion to Dismiss of claims after 1990 be Denied and Plaintiff be given Leave to file a second Amended Complaint based on those claims.

12. Plaintiff responded that Defendant has routinely, since 1982, refused to issue Plaintiff's current drivers license, and since 1980, has given everyone who asks for Plaintiff's drivers record a list of its false allegations instead of the Court's Judgment always in her favor.

And quotes the Magistrate's confirmation that, "The continuing wrong doctrine exists where a continuous chain of events or violations arises in which the cause of action accrues at the time of the final action in that series of events. New Port Largo supra, 706F. Supp. 1515. It quotes Judge as saying, "Accordingly, if the Defendant's activities constitute a continuing or additional violation of Law, then the doctrine applies". Continuing wrong against Plaintiff is in violation of F.S. 322.20 and the Fourteenth Amendment.

13. The Court Dismissed, upon a de novo review, finding it also had erred in allowing the Amended Complaint against the liable party, whom it states is, "immune from suit" under 42 U.S.C. ss 1983.

D. Notes on Appeal:

1. Plaintiff/Appellant filed brief aguing whether District Court had jurisdiction to dismiss without resolution, rather than transfer, pursuant to 28 U.S.C. 1631, and Miller v. Scobee.

And whether Defendant/Appellee had immunity, in direct violation of F.S. 322.20, and Houdaille v. Edwards.

2. Defendant responded that Court can reverse for abuse of discretion, and if Plaintiff files within 30 days of judgment.

3. Plaintiff pointed out, in her Reply Brief, that Defendant's violations of Constitutional, Judicial and Statutorial Law throughout 15 years to the present day, against Plaintiff, bear no immunity privileges, under 42 U.S.C. ss 1983, nor under Houdaille, wich require that Defendant be totally without fault. Defendant has never been wihtout fault in any of its cited actions. The District Court abused its discretion and must be reversed. Plaintiff filed within 21 days of Final Judgment.

Also, if the District Court did not have jurisdiction, it would have to transfer to the proper Court for resolution, which is not refuted by Defendant.

4, Appellate Court Affirmed District Court., "pursuant to Appellate Court Rule 36-1.

5. Plaintiff Requested Clarification, because none of the circumstances required for such Rule have been shown to exist.

6. On June 22, 1995, clarification was denied without comment.

FALSIFICATION OF APPELLATE AND ASSOCIATED RECORD

A. Conflict in Record:

1. Mandate and "Taxation of Costs against Plaintiff" were dated June 23, 1995, before Plaintiff ever received denial of clarification, issued just the day before.

2. Almost simultaneously, Plaintiff's deposit into her checking account, and transfer by check as her June mortgage payment on her condo, both sent by certified mail to Home Savings Bank, her mortgagee, were refused and returned without comment.

3. Plaintiff phoned the Court and requested a list of all documents filed since the Court's "Affirmation", and also a copy of the Docket Sheet.

4. She was told there were only 3 filings:

a. Affirmation
b. Plaintiff's Request for Clarification
c. Court's Denial

and 4 pages of Docket sheets. The cost would be $3.50.

5. Plaintiff inquired about the "Mandate and Taxation of Costs", and was told, "NO, we did not send you that".

Plaintiff put her request into writing, and enclosed $4.00.

7. She received, in response, only the 3 filings listed above, and 4 Docket ssheets listing "Mandate issued on June 23, 1995". But no:

a. Bill of Costs Filed
b. Costs awarded to
c. Objection to Bill of Costs

These are all blank.

B. Conflict of Interest; Conflict in Counsel:

1. The same Office representing Defendant in the Instant Case, is also representing the Defendant who has filed 50 forgeries of the Honorable Edward B. Moore's name, late Circuit Court Judge, after he was admitted to Critical Care and passed away, falsely claiming he sat in judgment over a man 4 years deceased, and thus affected "transfer of title" of Plaintiff's condominium, from the deceased man to such defendant.*

2. Plaintiff's Mortgagee, the same Home Savings Bank, afterwards told Plaintiff it totally falsified her

"excellent" mortgage record solely on demand of a pro se co-defendant of the same Defendant's client.

3. It appears that above Counsel has privately arranged to withdraw Plaintiff's last 5 years of her condo mortgage payments on her condo, as "costs" in the instant Case, from her Bank/Mortgagee, to create the artificial appearance of "default" after the fact, on her mortgage payments.

C. Second Conflict of Interest:

1. The party in charge of the Office representing the Defendant in the instant Case also served as Acting Director of the Office of the Department of Highway safety and Motor Vehicles, in 1982, after his predecessor, together with 4 other top executives, were fired. following its falsification of records.

2. After said party attained the position of Florida attorney General, the Office that investigates the Department, it was investigated no more, while the falsification of records continues to this day, "safe" from any monitoring whatsoever.

D. Third Conflict of Interest:

1. During the pendency of Case 91-5669, in the Eleventh Circuit Appellate Court, the above Counsel's client, who is a Defaulted Defendant in the Civil Rights case, involving the conspiracy to do away with 3 condo owners, to facilitate silencing them and seizing their

*District Court No.: 90-343
Appellate Court No.: 91-5669
Supreme Court No.: A-366

property by falsification of records, was nominated for the position of Attorney General of the United States.

2. It was at this time that the false secret "record", mentioned above, in Case 91-5669, was composed and substituted for the Official Record, without Plaintiff's knowledge.

a. It was also privately arranged, at this time, that all calls to the Appellate Court would receive only a taped response, so no caller would be able to verify the truth of the above.

b. Also that the Defaulted Defendant would be named "Attorney General of the United States", the investigating agent of terrorism, and that therefore, the terrorism in which she was involved would never be investigated either.

c. And since the fabricated "record" would show the Defaulted defendnt "reinstated, "with no contest by Plaintiff", the President of the United States and Congress, would "never" find out the truth.

REASONS FOR GRANTING THE WRIT

A. 1. In Houdaille v. Edwards, 374, So 2d 490 (Fla. 1979) 13.1, the Supreme Court of Florida recognized that to state a couse of action for imdemnification it is essential that the party seeking indemnity must be completely without fault. The instant Official Complaint expressly provides that the Defendant is an ongoing tortfeasor, and ther efore an action for indemnity does not exist.

The District Court has abused its discretion.

2. The District Court maintains that the Defendant is an "arm of the state", and "immune" from suit. Also that it is not a "person". However, in its cited violations of Florida Statute 322.20, and of the Florida Trial Court, it is acting , not as an arm of the state, but as a tortfeasor

against the state, and therefore must be treated as such.

Moreover, everything it is charging Plaintiff with, as "against the state", has been proven, by both the state and its own admission, to be false. Therefore, pursuant to Houdaille, it is not entitled to indemnification.

The Defendant cannot be simultaneously granted immunity as "serving" the state in mainaining false records, while violating the same state Court and Statutes.

However this Court shall rule, all parties have already officially testified in state Court that Plaintiff is without fault, and therefore, none of the ongoing damages against her can serve the state, nor find any justification under the Constitution of the United States.

B. 1. Plaintiff filed her Complaint/Amended Complaint, in proper person. The Federal Rules of Civil Procedure expressly provide that the Court shall be lenient toward such a party. Therefore, the District Cour's decision that itself has erred in granting Defendant's Motion that Plaintiff add the Department of Highway Safety and Motor Vehicles as a party, cannot be construed as cause to deprive Plaintiff of relief solely on the grounds that she has complied with the District Court ruling, which itself which itself subsequently judged "erroneous". Plaintiff does not have jurisdictin to overide the Federal Court.

2. Plaintiff has been damaged through no fault of her own, and therefore, is due compensation and injunctive relief.

C. Defendant is actively engaged in falsification of Plaintiff's current and past record, so as to even deceive the Courts, as cited above. So that if the Court were to rule in Defendant's favor, the Court would be in contradiction of itself.

D. Since Miller v. Scobee requires that all issues be set at rest, and the current Affirmation requires that nothing be set at rest, and since all parties agree with the Traffic Trial

Court that Defendant is totally at fault, and Plaintiff totally without fault, in all the issues herein, the Final Judgment cannot have yet occurred.

E. Moreover, since F.R.C.P. Rule 62(a) grants an automatic Stay of any judgment until the expiration of 10 days after its entry, and since the Mnadate and "taxation of costs" and bill of costs have not yet even been officially served, the execution would not yet due at all, even if everything else were in order.

F. And since all damages imposed upon Plaintiff, by Defendant/ Defendant's Counsel, including, but not limited to the secret disposal of the last 5 years of mortgage payments on her condo, a reversal of, and compensation for all damages is mandatory.

CONCLUSION

Plaintiff/Petitioner respectfully requests this Honorable Court to grant this petition, issue a writ of certiorari to the United States Court of Appeals, or preferably to require the entire record be sent up for decision of the entire matter in controversy, under 28 U.S.C. 1254(2).

Respectfully submitted,

Lu I. Gowin

Lu I. Gowin, Plaintif/Petitioner
In proper person

Temporary Mailing Address and Phone:
Lu I. Gowin
% Pritchett
P.O. Box 0833
Deerfield Beach, Fl. 33443-0833
305-860-0689

EXHIBITS:

I. Appellate Court Decket Sheet, showig no Taxation or Bill of Costs:

Atty Code: P; Date Docketed: 12/17/93
Appellant: LU I. GOWIN; Appellee: DADE COUNTY AUTO TAG OFFICE; DISTRICT OFFICE: 113C-1 SFL - MIAMI DISTRICT COURT DKT # 91-961-CIV-DAVIS; FILED IN DISTRICT CT.: 5/7/91; NOA FILED: 12/3/93; NATURE OF SUIT: 3/440; DISTRICT JUDGE: Edward B. Davis; COURT RPTR.: Larry Herr; LU I. GOWIN, Plaintiff-Appellant; versus DADE COUNTY AUTO TAG OFFICE, DEPT. OF HIGWAY SAFETY AND MOTOR VEHICLES, Defendants- Appellees.; CLOSED: 6/23/95; ATTORNEY FOR APPELLANT: Lu I. Gowin, P.O. Box 0833, Deerfield Beach, Fl. 33443-0833; ATTORNEYS FOR APPELLEES: Saralyn Nemser, Fl. Attorney General Dept. of Legal Affairs 4000 Hollywood Blvd., Suite 505-S Hollywood, Fl. 33021 (305) 985-4788; 7/10/94 Cecily Robinson Duffie -do- (305) 985-47951.

1. MISCELLANEOUS FILINGS: None
2. JURISDICTIONAL SCREENING: FILINGS/ACTIONS 1/3/94 Staff Attorney Jurisdition; 2/7/94 Staff Atty. Further Review; 1/10/94 Request Additional Documents; 2/8/94 Probable Jurisdiction Noted
3. RECORD AND EXHIBITS FILED: 1/10/94 Appeal Info. Sheet; 1/13/94 Ct. Rptr Ack; 3/2/94 Certificate of Readiness, Due: 2/24/94;7/11/94 ROA(#Vois 1 P1, Due 7/3/94.
4. BRIEFING INFORMATION: Briefing Notice Issued 3/2/94; 5/5/94 Brief of Appellant D: 5/3, Due 4/13/94; 5/5/94 Record Excerpts Pro Se; 6/10/94 Brief for Appellee D 6/7/94, Due: 6/10/94; 8/18/94 Reply Brief for Appellant d8/16/94, ss5, Due; 6/24/94.
5. EXTENSIONS: 6/23/94 Reply Brief, GRTD. BY CLERK WAG. Extended to NFE 8/24/94.

6. OTHER NOTICES AND ORDERS: 4/14/94 - Flg. Appellant's 30 day extension request. caw 4/26/94 Flg. ORDER: Appellant's motion for a thirty (30) day extension of time to file brief is GRANTED. SFB caw 7/11/94 Flg. Appellant's motion to substitute "appeal brief for reply brief". caw moot; 5/26/95 Flg. Appellant's request for clarification. caw (sub to court 5/26/95); 6/22/95 Flg. ORDER: Appellant's motion for clarification of May 11, 1995 judgment is denied. ERC caw;
7. CALENDAR INFORMATION: Argument Panel ERC/SFB/SHB; Date Submitted: 12/23/94
8. OPINION INFORMATION: NonPub; 5/11/94 Opinion Issued; Affirmed, Rule 36-1
9. JUDGEMNT AND MANDATE INFORMATION: 5/11/95 Judgment Entered; 6/23/95 Judgment & Opinion Issued to Clerk as Mandate; 6/23/95 Record on Appeal Returned to Clerk (1 Vols.)*
10. REHEARING INFORMATION: None
11. SUPREME COURT INFORMATION: None

NOTATIONS REGARDING COMMUNICATIONS WITH PARTIES OR COUNSEL: 6/22/94 Called Appellee and they are sending corrected CIP pages/ebm

II. Appellate Court File, showing no Mandate, Taxation, Bill of Costs or Opinion:

a. Receipt for payment
b. Plaintiff's Request for Clarification Denied
c. Plaintiff's Request for Clarification
d. Affirmed

III. Bank's refusal of Plaintiff's deposit and transfer to her mortgage account. 5 years of Plaintiff's mortgage payments on her condo disappeared from her account, without comment from her mortgagee, Home Savings Bank.** Mortgsagee refused, without comment, Appellant's deposit into her checking account, and clerk transferring same into her mortgage account, sent by certified mail.

IV. Some of Plaintiff's driving record, which are Exhibits disposed of by Defendnat. without ever recording them and without comment. All are attached to Amended Complaint:

A. Traffic Court Judgment:
   a. Not guilty
   b. Not guilty
   c. Nolle Prosse
   d. Nolle Prosse

B. Plaintiff's drivers exam results. Plaintiff passed all exams, including road test.

C. Dade County Audit, showing Defendant is aware it is placing false charges against Plaintiff.

V. "Judgment", as sent to Clerk of District Court, which has "Taxation of costs against Plaintiff" typed in after original was copied and sent to Plaintiff.

*Please note that Docket shows "Mandate" and "Opinion", which file, as served upon Plaintiff, denies.

**Home Savings Bank, P.O. Box 2116, Princeton, Florida 33032 - 6 days after refusal of clarification of judgement. The only way Rule 36-1 could apply is by (d), "Summary Judgment, directed verdict, or judgment on the pleadings is supported by the record". Defendant's secretly submitting to the Federal Court its false "record", as it did in the companion Case.

*** Please note that the "Bill of Costs" has been dealt with secretly by Defendant with Plaintiff's mortgagee.

****Plaintiff's mortgage money would have been secretly removed from her account to cover up the false "foreclosure documents" in companion Case.

*****All sub-notes show deception of the Federal Government by Defendant, who is secretly and illegally using the taxpayer's money for this purpose.

THE BILL OF RIGHTS

The Fourth Amendment
Against
Unreasonable Searches and Seizures:

The right of the person to be secure in his person, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and clearly describing the place to be searched, and the persons or things to be seized.

5a

Lt J Flavin
L Pritchett
PO Box 0833
Deerfield Beach Fl.
33443-0833

Name
1st Notice 7/10
2nd Notice
Return

CERTIFIED
P 890 379 223
MAIL

Linda G Drago
Branch Manager
Home Savings Bank
PO Box 2116
Orlando, Fl.

Refused

U.S. POSTAGE
PAID
DEERFIELD
JUN
$2.52

4-30
7-3
7-15

BEST AVAILAB

APPENDIX A- ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

FILED JUNE 22, 1995

IN THE UNITED SATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-5324

Lu I. GOWIN,

Plaintiff/Appellant,

versus

DADE COUNTY AUTO TAG OFFICE,DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES,

Defendants-Appellees

On Appeal from the United States District Court for the Southern District of Florida

---

Before Edward R. Cox, Circuit Judge

ORDER:

"Appellant's Motion for clarification of May 11, 1995 judgement is denied."

LE COPY

APPENDIX B - IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 93-5324
NON-ARGUMENT CALENDAR

D.C. DOCKET NO. 91-0961-CIV-DAVIS

LU I. GOWIN,

Plaintiff/Appellant
versus
DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES AND ALL RESPONSIBLE AGENCIES

REQUEST FOR CLARIFICATION

PLAINTIFF, Lu I. Gowin, in proper person, respectfully requests clarification of the judgment issued on May 11, 1995 in the above styled Case, pursuant to Rule 31-1, requiring that specific circumstances exist, none of which have been identified as existing in said Case.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed, on this 23rd day of May, 1995, to:

Cecily Robinson Duffie
Assistant Attorney General
4000 Hollywood Boulevard
Suite 505 South
Hollywood, Florida 33021

By: Lu I. Gowin
Plaintiff/Appellant

Temporary Mailing Address and Phone:
Lu I. Gowin
P.O. Box 0833
Deerfield Beach, Fl. 33443-0833
305-860-0689

APPENDEX C - ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED MAY 5, 1995

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-5324
Non-Argument Calendar

D.C. Docket No. 91-961-CIV-DAVIS

LU I. GOWIN,

Plaintiff/Appellant,

versus

DADE COUNTY AUTO TAG OFFICE, DEPT. OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Defendants/Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(May 11,1995)

Before COX, BIRCH, and BLACK, Cicuit Judges.

1

PER CURIAM: AFFIRMED. See 11th Cir. Rule 36-1.

11th Cir. R. 36-1 provides:

When the Court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

APPENDIX D - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DATED MAY 7, 1992

LU I. GOWIN,

Plaintiff,

versus

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, AND ALL RESPONSIBLE AGENCIES,

Defendants.

CASE NO. 91-0961-CIV-DAVIS

ORDER ON MOTION TO DISMISS

Before the Court are Defendant's Motion to Dismiss, (D.E. 32), and Supplemental Motion to Dismiss, (D.E.46). The Plaintiff is suing Florida's Department of Highway Safety and Motor Vehicles ("the Department"). By Report and Recommendation, Magistrate Judge Stephen T. Brown advised the Court that the Motions should be granted based on a statute of limitations defense. Although the Magistrate Judge's reasoning is sounnd, the dispositive issue is whether the Defendant is a state agency that is immune from suit under 42 U.S.C. ss 1983. Upon a de novo review, the Court finds that the Defendant is such a state agency and grants the motion to dismiss on this basis.

Background

The Magistrate Judge's Report and Recommendation fairly reflects this matter's relevant facts, as alleged by the Plaintiff's pleadings. On January 14, 1992, the Plaintiff, Lu I. Gowin, filed an amended complaint for

injunction and monetary relief against Defendant Department of Highway Safety and Motor Vehicles. The Amended Complaint alleges that Gowin's license was suspended in 1980, and that between March and April, 1982, she applied for a license three times, but was always refused without cause. In November, 1983, the police stopped and arrested Gowin due to an expired decal. At a subsequent hearing on November 16, 1993, the state court allegedly ordered the Department to give Gowin a driver's test and a license. In January, 1984, the Department had not yet responded. She was denied a license again in 1984, and incidents occurred in 1985, 1986 and 1987 where Gowin was jailed for driving without a license. Finally, in 1990, the Motor Vehicle Office complied with the Court Order to give the Plaintiff a driver's test, but did not issue a license.

II. Discussion

The Eleventh Amendment immunizes a State from a federal suit for the deprivation of civil liberties unless the immunity is explicitly waived by the State or overridden by Congress. Will v. Michigan Dep't of State Police, 109 S.Ct. 2304, 2309 (1989). As the Magistrate Judge noted, the Amended Complaint esentially states an action under 42 U.S.C. ss 1983. None of the legal theories asserted by this pro se complainant even arguably avoids the Eleventh Amendment shield.

Even under this generous reading, however, the Amended Complaint may suffer a defect. The language of Section 1983 only holds a "person" liable for the deprivation of rights. In Will, the Supreme Court held that a State was not a "person" under the language of the Act. The Court also noted that governmental entities which are considered "arms of the state" are themselves essentially the State, and

therefore not "persons" under Section 1983. Id. at 2311. Thus, the issue bef re the Court is whether the Department is an "arm of the State". If the Department is, then Section 1983 does not apply, the Department is immune under the Eleventh Amendment, and the Court does not have subject matter jurisdiction over this action.

The analysis used to determine which political entities are protected by the Eleventh Amendment also determines whether an agency is an "arm of the state". See Howlett v. Rose, 110 S. Ct. 2430, 2437 (1990) (equating the analysis of Eleventh Amendment immunity with the analysis of a "person" under Section 1983). In turn, state law establishes whether the state intended to create an entity comparable to a county or muncipality or one designed to take advantage of the state's Eleventh Amendment immunity. Tuveson v. Florida's Governor's Council on Indian Affairs, Inc., 734 F. 2d 730 (11th Cir. 1984). In Tuveson, the court outlined the factors relevant to immunity: (1) how the state law defines the entity, (2) what degree of control the state maintains over the entity, (3) where funds for the entity are derived, and (4) who is responsible for the judgments against the entity.

Under the analysis prescribed in Tuveson, the Department is immune from this lawsuit. The Department of Highway Safety and Motor Vehicles is one of the twenty-five executive departments generally authorized by the Florida Constitution. Fla. Const. art. IV, sec. 6. Notably, local government organizations are prescribed elsewhere in the charter. See Fla. Stat. art. VIII. The Department is directed by Florida's Governor and Cabinet Fla. Stat. ss 20.24. It administers and enforces the provisions of Chapter 320 of the Florida Statutes, which governs Motor Vehicle licenses. Id. ss 320.11. These provisions reveal that the Department of Motor Vehicles is an arm of Florida's

executive and thus an arm of Florida itself. Therefore, the Department is not subject to liability under Section 1983, or any other action in this Court. Subsequently, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is GRANTED, and that the Amended Complaint is DISMISSED. Any and all pending motions are MOOT. This case is CLOSED.

DONE AND ORDERED in Chambers, at Miami, Florida, this 7th day of May, 1993.

Honorable Judge Edward B. Davis
Federal District Judge
Southern District of Florida